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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE: TERRORIST ATTACKS ON
4 SEPTEMBER 11, 2001

03 MDL 1570 (GBD) (FM)

5 -----x
6 New York, N.Y.
7 October 20, 2016
8 11:30 a.m.

9 Before:

HON. SARAH NETBURN,

Magistrate Judge

11 APPEARANCES

12 KREINDLER & KREINDLER
13 Attorneys for Ashton Plaintiffs
14 BY: JAMES KREINDLER

15 MOTLEY RICE
16 Attorneys for Burnett Plaintiffs
17 BY: ROBERT T. HAEFELE
18 JODI WESTBROOK FLOWERS

19 ANDERSON KILL & OLICK
20 Attorneys for O'Neill Plaintiffs
21 and Plaintiff's Executive Committee
22 BY: JERRY S. GOLDMAN

23 WIGGINS, CHILDS, QUINN & PANTAZIS
24 Attorneys for Havlish and Hoglan Plaintiffs
25 BY: TIMOTHY B. FLEMING
DENNIS G. PANTAZIS

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APPEARANCES (Cont'd)

COZEN O'CONNOR

Attorneys for Federal Insurance Plaintiff

BY: SEAN P. CARTER

SCOTT TARBUTTON

BAUMEISTER & SAMUELS

Attorneys for Foster, et al. Plaintiffs

BY: MICHEL BAUMEISTER

BERNABEI & WACHTEL

Attorneys for Defendant Dr. Al-Turki, et al.

BY: ALAN R. KABAT

CLIFFORD CHANCE

Attorneys for Defendant Dubai Islamic Bank

BY: STEVEN COTTREAU

GOETZ & ECKLAND

Attorneys for Defendants WAMY and WAMY International

BY: FREDERICK GOETZ

LEWIS BAACH

Attorneys for Defendants IIRO and MWL

BY: WALEED NASSAR

SALERNO & ROTHSTEIN

Attorneys for Defendant Yassin Abdullah Kadi

BY: PETER SALERNO

MOLO LAMKEN

Attorneys for Defendant Dallah Avco

BY: ROBERT KRY

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(In open court, case called)

THE COURT: Good morning. Why don't I ask that just those people who are going to be speaking identify themselves, because otherwise we'll spend the whole morning introducing ourselves.

MR. CARTER: Good morning, your Honor, Sean Carter from Cozen O'Connor. I'm counsel for the plaintiffs in the federal insurance action and I serve as a member of the Plaintiffs Executive Committee as well.

MR. HAEFELE: Good morning, your Honor, Robert Haeefele from Motley Rice for the Burnett plaintiffs and for PEC as well.

THE COURT: Thank you.

MR. KREINDLER: Good morning, your Honor, Jim Kreindler. We have the Ashton plaintiffs, and I'm one of the co-chairman of the Death and Injury Committee.

THE COURT: Thank you.

MS. FLOWERS: Good morning, your Honor, Jodi Flowers also on behalf of the Burnett plaintiffs and co-lead of the PEC with Mr. Kreindler.

MR. KABAT: Good morning, your Honor, Alan Kabat for Dr. Al-Turki, et al. and five other defendants.

MR. COTTREAU: Good morning, your Honor, and welcome to the case, Steve Cottreau from Clifford Chance for Dubai Islamic Bank.

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1 MR. NASSAR: Good morning, your Honor, Waleed Nassar
2 on behalf of the Muslim World League and the International
3 Islamic Relief Organization.

4 MR. GOETZ: Good morning, your Honor, Frederick Goetz
5 for the World Assembly of Muslim Youth. I'm co-counsel with
6 Omar Mohammedi, and Mr. Mohammedi was taken ill this morning so
7 he's not here.

8 THE COURT: I hope he recovers well.

9 MR. GOETZ: Thank you.

10 MR. FLEMING: Good morning, your Honor, Timothy
11 Fleming, Wiggins, Childs, Pantazis, Fisher & Goldfarb, counsel
12 for the plaintiffs in Hoglan, et al. versus Iran, et al., and
13 also counsel in the Havlish case.

14 MR. PANTAZIS: Good morning, your Honor, Dennis
15 Pantazis also with the Wiggins Childs firm representing the
16 same clients.

17 MR. SALERNO: Good morning, your Honor, Peter Salerno,
18 Salerno & Rothstein, representing the defendant Yassin Kadi.

19 MR. KRY: Your Honor, Robert Kry with Molo Lamken
20 representing the defendant Dallah Avco.

21 MR. GOLDMAN: Jerry Goldman, Anderson Kill, for the
22 O'Neill plaintiffs, Plaintiff's Executive Committee.

23 THE COURT: Good morning, everybody.

24 So as we now know, the case has been reassigned to me.
25 I won't tell you the way in which it was reassigned, but I

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1 consider myself fortunate to have this case, and I'm looking
2 forward to working with all of you to manage this case in a way
3 that makes sense for everybody.

4 I have an agenda for the items that I want to talk
5 about. Let me mention those to you so that we all keep them in
6 mind, and then we can proceed from there, and if there are
7 other things that you want to share with me, I'm happy to hear
8 them. I'm hoping we'll be able to come up with a protocol so
9 we can move these cases forward, address the sort of immediate
10 issues with respect to the funds and some of the issues that
11 have come out of the recent decisions that I have issued and
12 make sure that we are focused on the future.

13 So on my list of agenda items for today is to just
14 make sure I understand so I can report to Judge Daniels whether
15 or not we're going to be expecting any objections from the
16 recent reports and recommendations that I have issued, or
17 whether or not he can go ahead and execute those judgments when
18 the time for objections has expired.

19 I also want to speak about some recent applications
20 that have been made in the Bauer and Ashton cases, there may
21 have been another in addition recently, that is aimed to be
22 consistent with the reports and recommendations that I have
23 issued recently.

24 I would like to hear what the Plaintiffs Executive
25 Committee believes will be the protocol with respect to the

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1 Saudi Arabia cases, and I want to talk about sort of both
2 procedurally when we think those are going to be back in the
3 district court. And I want to talk about whether or not the
4 folks that are in this room anticipate there being additional
5 cases brought, there may be another unrelated to the 9/11
6 terrorist attacks, if so or if not, whether or not an
7 application will be made to MDL panel in the first instance.

8 Going back to my prior reports and recommendations, I
9 want to talk about my punitive damages ruling and set a
10 briefing schedule on that particular issue.

11 We have tried to canvass this massive docket and get
12 ourselves up to speed as quickly as possible. It is our
13 understanding that there are two pending motions, a motion to
14 compel in the Dallah Avco motion to compel, and I believe
15 there's also a motion for sanctions that's been fully briefed.
16 I want to make sure that those are the only two motions that
17 are pending judicial resolution, and then just sort of talk
18 about where we go from here.

19 So that's on my agenda list. And to the extent you
20 all came with other items that you want me to talk about, I'm
21 happy to hear from you all as well.

22 Unless there are any objections, why don't we begin
23 with what's going on now with respect to the judgments that are
24 being sought against Iran and the need to get those judgments
25 finalized in order to allow the plaintiffs to apply to the

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1 funds.

2 So with respect to those plaintiffs for whom I have
3 already issued reports and recommendations, does anybody
4 anticipate filing any objections that Judge Daniels should know
5 about?

6 MR. KREINDLER: Good morning, your Honor. No, because
7 time is of the essence.

8 While we're here, let me just take a minute to talk
9 about the fund and the stages the fund will operate under. The
10 fund is a very unusual fund. It's written in a way so that
11 98 percent of the 9/11 victims cannot receive any money from
12 the fund as it is now because the 9/11 award is deemed to trump
13 whatever judgment you get and you have got a 100 percent
14 setoff. So the only people who can go into the fund as it
15 exists now are the non-VCF people, our clients who continued
16 with their suits against American and United and eventually
17 settled. We have submitted those to your Honor. And your
18 Honor is quite right, punitive damages are not awardable in the
19 fund nor is prejudgment interest, so in the key components
20 we're anxious to get final judgments so we can participate.

21 Ken Feinberg's deadline for submitting the cases that
22 had final judgments was October 12, and we submitted four cases
23 by that deadline. The reason the timing is significant is he's
24 got a little more than a billion dollars to spend on all these
25 judgments. He has to total them up and then figure out what

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1 percentage everyone can get. At the end of the day it may be
2 very modest, it may be 6, 7, 8 percent, and no matter how big
3 the judgment is, it's effectively capped at \$25 million.

4 We are anxious to get final judgments in the dozen
5 cases we just submitted to you. With those final judgments, we
6 want to get them to Mr. Feinberg so he can include them in the
7 mix of cases he's looking at now and so we can get some money
8 from the fund.

9 THE COURT: You mentioned an October 12 deadline.
10 What does that mean for cases where judgments are being entered
11 now?

12 MR. KREINDLER: So the deadline is 90 days from final
13 judgment, but the reason we're in a rush is he's going to spend
14 all the money he has by the end of the year. So for cases that
15 get final judgments in January, February, there's not going to
16 be any money left.

17 Now the fund may be replenished if another bank gets
18 into trouble for moving Iranian assets, it's possible that
19 money could come into the fund. But to share in this very
20 limited pot, we really do need to get applications in
21 immediately, "immediately" being the next couple of days or a
22 week.

23 THE COURT: So we understand that and we are
24 working -- the case was only just transferred to us, so we are
25 working as quickly as possible to get judgments out. And I

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1 think the 14-day deadline for objections will run I think next
2 Wednesday on some of the cases and I think next Friday on
3 others. And absent hearing that there's going to be an
4 objection filed by the plaintiffs, and we don't expect anything
5 filed by the Iranians, but you never know, I think you'll get
6 judgments then. So you should have those judgments by the end
7 of next week.

8 And with respect to applications that are being filed
9 now, again, I think we have set a framework so everybody
10 understands what we're talking about here. We plan on moving
11 on those as quickly as possible. So our goal, as the Court, is
12 to get those judgments out certainly by the first half of
13 November. That sounds like it will still work for everybody.

14 MR. KREINDLER: I think so. What he said to me and to
15 some others is if you get some applications in the end of
16 October, I should be able to include them in my calculation of
17 who is going to share in the money I have now. So that's why
18 timing is of the essence.

19 In terms of our briefing punitive, we appreciate that,
20 and just to reiterate, neither punitive damages or prejudgment
21 interests are elements you can get from Ken Feinberg's fund now
22 for purposes of this partial final judgment.

23 Just one more point on it. In addition, we're in
24 somewhat of a quandary on this point. We have four cases with
25 final judgments and we have got our applications in. In those

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1 cases, Judge Maas, as you know, used the multiplier of punitive
2 of 3.44, and 9 percent interest rate is the issue of New York
3 versus federal. When you ask -- and by briefing on punitive,
4 it might make sense to also include the 9 versus the
5 4.9 percent prejudgment interest point, because we have got
6 this inconsistency between the first judgments rendered in
7 Havlish of 4.9 and ours at 9, but that I'm throwing out.

8 And then the last thing and then I will sit down is
9 even apart from these limited number of cases where the people
10 did not go to the VCF and participate in the fund, we do
11 intend, moving forward, to get judgments for all the 9/11
12 families against Iran in case the legislation is changed to
13 permit all 9/11 plaintiffs to share. Or in the event that
14 there is ever a resolution with Iran itself outside the fund,
15 we think it's better to have final judgments for everybody
16 rather than just 10 percent of the 9/11 plaintiffs. But there
17 is certainly no urgency, and that will take many months to run
18 through hundreds of thousands of cases to do that.

19 MR. FLEMING: Tim Fleming for the Hoglan plaintiffs.

20 To add a little bit to what Mr. Kreindler explained
21 about the fund, what he says was correct with respect to the
22 estates who have recovered in the VCF-1, the 9/11 fund, there
23 is the problem of them being canceled out by the VCF award that
24 they got in those proceedings. That does not apply to other
25 family members who did not get an award from the 9/11 fund

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1 which covers a great deal of the Hoglan plaintiffs for whom you
2 in your report and recommendation to Judge Daniels did receive
3 a recommended award.

4 And so we want to be sure that we can move -- what we
5 did was we submitted to Judge Daniels the day before yesterday
6 exactly what you told us to do in the report and
7 recommendation, and that is submitted to a chart where
8 everybody who got those recommendations together with a
9 proposed order.

10 We didn't file a formal 54(b) motion, but we wanted to
11 make sure that those do get acted on because we do plan to file
12 some objections for some of the persons who were not found to
13 be functional equivalents of immediate family. And we didn't
14 want the filling of those objections to delay an entry of
15 judgment for those who did receive a recommendation and would,
16 in our view, be eligible for the VSST fund. So if there is
17 anything else to do, we stand ready to do that, but we think we
18 made that clear to Judge Daniels in our letter to him.

19 As I said, we are going to file some objections on
20 behalf of some of the people and also want to point out there
21 are two estates which your Honor has not ruled -- given a
22 recommendation with respect to, that's the Rowe family and the
23 Shefi family, and I want to point that out.

24 THE COURT: They're on my radar screen.

25 MR. FLEMING: Thank you very much.

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1 MR. BAUMEISTER: Good morning, your Honor, Mitch
2 Baumeister, Baumeister & Samuels. Good to see you, your Honor.

3 THE COURT: Good to see you.

4 MR. BAUMEISTER: I agree with everything that has been
5 said. I'm not going to belabor the point, but I think we need
6 a little structure, because in the Bauer case, in which you
7 issued the order, the two points I think you are concerned
8 about whether there would be objections would be the interest
9 rate and the punitive damages issue. And on behalf of the
10 Bauer plaintiffs, Baumeister & Samuels clients, we do not
11 intend to offer any objections, and I do not believe anyone in
12 this courtroom is going to offer objections on the interest
13 rate or the punitive damages to Judge Daniels. If they are,
14 they can speak up now.

15 I think Jim's point is to the extent there may be some
16 issue we would like to look at with respect to the 9 percent
17 versus the 4.6, because there is an inconsistency in that I
18 have clients who have Judge Daniels' orders with 9 percent and
19 with punitive multipliers. And as a result, they stand in a
20 class that is going to be distinct depending upon your Honor's
21 ruling on the interest and on the punitive damages. So we'll
22 have an inconsistency in the class of people. So we'll have
23 Client A where they will get a multiplier and 9 percent
24 interest, and then depending upon your Honor's ruling it may be
25 different. So I don't know how the Court handles that issue,

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1 and I wanted to bring to the Court's attention.

2 THE COURT: I'm well aware of the issue.

3 MR. BAUMEISTER: So that's number one.

4 Number two, having dealt with Ken Feinberg quite a bit
5 along with Jim and the VCF fund, the next issue, the
6 objections, I don't think there's going to be any objections.

7 In terms of whether there's money in the Iran pot or
8 not is immaterial, it's a question of the clients are eligible
9 and have the right to do it, certain clients, and therefore as
10 lawyers we have to protect that right and go forward. And
11 there really are two classes of people that have the potential.
12 And the 4.6, of the frequently asked questions for the Iran
13 fund, Ken Feinberg, who I had a recent conversation with, has
14 clarified that anyone who has gotten a VCF award, generally
15 spouses and children, will not be eligible to recover money
16 under the Iran fund.

17 But as Hoglan has just said, there is another distinct
18 category within the definition of the Iran fund of the
19 beneficial class under the frequently asked questions, and they
20 essentially cut it off at spouses and children can't get
21 anything under 4.6. But we now have parents and siblings, and
22 the Court has expanded that potential class by also adding what
23 I call the tertiary relationship-type test for people who may
24 not fit within the exact definition, at least under the default
25 judgment. Whether that will be accepted ultimately by the Iran

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1 fund is another issue.

2 So the point is here we have two classes of people
3 that clearly we, in our Bauer complaint, are filing default
4 judgments on behalf, and that is the parents and siblings who
5 were not covered by the VCF fund, and the tangential
6 relationship people, whether or not they can recover from the
7 Iran fund or not. We will get you additional briefing to see
8 whether the nexus of the relationship is good enough for the
9 Court to hold they're entitled as a beneficiary to get money
10 under the default judgment.

11 So this is a long-winded way of saying that these are
12 the issues that are confronting the Court and us as attorneys
13 representing our clients, these are the classes of people. And
14 we would also ask that the Court, if you -- like Hoglan, I
15 think as a practical matter, whether someone was a stepfather
16 and not within the intestacy or the direct lineage you want
17 additional evidence, we would be happy to give that to you.

18 But we would like to see, if all possible -- we
19 understand the Court has been incredibly responsive, working
20 very hard and getting us very quick answers -- to understand
21 people with a relationship test becomes a question mark, we
22 would like to have a chance to brief that issue but not hold up
23 the people who fall into the class as parents and siblings, so
24 we get a default judgment so we get in front of Ken Feinberg
25 before the money runs out or maybe supplement it.

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1 So I don't know if I clarified any of the issues for
2 the Court or I made them murkier, but I tried my best to tell
3 you these are the things that we're grappling with now.

4 THE COURT: Let me tell you how I have been
5 approaching this, which hopefully has been self-evident.

6 I'm sort of looking at low hanging fruit because I
7 understand you have immediate needs, and so we have been
8 issuing our orders with that in mind, the things that I think
9 are the least complicated versus things that get progressively
10 more complicated. I'm aware that we have two non-citizen
11 estates outstanding that fall within the more complicated
12 category, so we're working on getting something out as soon as
13 possible on those family members' claims.

14 So let me talk about a few items.

15 One, Mr. Kreindler, you mentioned that you would
16 like -- and I think, Mr. Baumeister, you intimated as well --
17 an opportunity to challenge not just the punitive damages
18 piece, which I have invited, but also the interest issue, the
19 prejudgment interest. I think as a procedural matter probably
20 what makes the most sense for you all is to submit something to
21 Judge Daniels that indicates that you intend to object to
22 the --

23 MR. BAUMEISTER: Judge, we're not objecting to it.
24 You asked for briefing. I'm not objecting.

25 Jim, are you objecting?

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1 MR. KREINDLER: No.

2 MR. BAUMEISTER: I want the Court to understand, we're
3 not objecting to the way you're handling it. You asked us to
4 brief the punitive damages, and all we ask is you give us a
5 chance to brief that. But we're not here to object to your
6 order that you issued in Bauer and --

7 THE COURT: So long as you understand that --

8 MR. BAUMEISTER: The time run and we waive our right,
9 we understand that.

10 THE COURT: The recommendation that I have given with
11 respect to prejudgment interest thus far, if you don't object,
12 your opportunity to object for these particular individuals
13 will pass.

14 MR. BAUMEISTER: We understand.

15 THE COURT: Good. So then to your point about
16 different cases, trust me, I did a lot of legal research
17 working with my law clerk trying to get as good a handle on the
18 law as I can. I think the law is a bit of a mess, as I'm sure
19 you all have come to realize, and it's not clear to me that the
20 path that Judge Maas took, while I think it is one that is
21 defensible, when I look at the case law it's not clear that his
22 conclusions grew out of the way the case law developed.

23 And so rather -- I know you all were doing what I
24 understand you to be doing, which is just to follow what Judge
25 Maas had done in the past, and that makes perfect sense.

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1 Because I think it's a more complicated issue, I didn't want to
2 make a recommendation to Judge Daniels without the benefit of
3 your thinking on this issue.

4 And given that this was not part of the fund, it made
5 more sense in my view to set aside this very significant issue
6 that I think is significant for the families. I think it's
7 significant for questions about how families are treated within
8 cases and within single terrorist attacks and how the law has
9 developed generally. Much of this law arises out, of as you
10 know, a totally different terrorist attack with a totally
11 different volume of participants in those litigations. So when
12 you get to a case like this one, when the numbers start getting
13 so enormous, I think you have to pull back for a minute and
14 make sure we're following the law in a rational way. So we can
15 talk about where we're going to go with that.

16 Before we move on, on the immediate needs, some of the
17 plaintiffs, I believe in Bauer and Ashton, recently submitted
18 applications to me for non-immediate family members. My
19 understanding is that a lot of these are not supported by
20 individual -- Mr. Baumeister, I think some of these are your
21 clients, maybe, but they're not personal affidavits submitted,
22 it's just a lawyer affidavit, which struck me as unusual.
23 Certainly the other cases that I have been looking at already
24 there was a personal affidavit.

25 And I guess I would like to hear from you -- obviously

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1 your testimony or attorney affidavit wouldn't be admissible at
2 trial. I appreciate we're in a different posture. I think the
3 best practice is to have individual affidavits, and I'm
4 wondering whether or not that is something that you're working
5 on or whether it's something I can expect.

6 MR. BAUMEISTER: To break it down, you used a term of
7 art there, which, as you said, is confusing, and that was
8 immediate family members. It is our belief that when you
9 define for default judgment purposes and ultimately in the
10 fund, the Iran fund, immediate family, spouse, children,
11 parents and siblings, beyond that cut off we then get into what
12 I call other potential beneficiaries.

13 So I don't think the Court is saying to me if you have
14 a parent or you have a brother or sister you need a personal
15 affidavit from them. What I think the Court has asked for in
16 the Hoglan cases and in the Bauer cases, of which we have
17 three, is if there's a situation where there isn't a clear what
18 I call intestacy nexus of either parent, spouse, children,
19 parent or sibling, and in those, like a stepfather or
20 stepdaughter, a relationship where someone had a very close
21 relationship but didn't formally adopt them, you have asked us
22 to get personal affidavits on those three cases, and we will
23 endeavor to do that.

24 That is a little more complicated given that we have
25 got to go back to the clients and got to explain it to them,

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1 and we will get that for the Court in what I call categories of
2 clients that fall outside of the four classes that are
3 recognized under the Iran fund and generally recognized in the
4 default judgments that we have gotten.

5 THE COURT: So with respect to your case, the Bauer
6 case, you believe there are three individuals who fall within
7 that category?

8 MR. BAUMEISTER: Yes. In fact, your law clerk wrote
9 us, three solatium plaintiffs who claim to be what I call, and
10 call them now, functionally equivalent of an immediate family
11 member. So that means to me that they fall outside the four
12 categories I just mentioned.

13 And you said to me: Would you -- on those three
14 functionally equivalent solatium damage plaintiffs, would you
15 please give us more than your attorney's affidavit? We will
16 endeavor to do that. We thoughts the lawyer's affidavit would
17 be sufficient. If it's not for this Court, we will go to the
18 clients and get individual affidavits to create a quantum of
19 proof that you're comfortable with to make a decision upon.

20 THE COURT: Are there any other plaintiffs that are
21 seeking judgments at this time that have not been presented to
22 me or that fall outside of the immediate category and for which
23 I would want personal affidavits?

24 MS. FLOWERS: May it please the Court, Jodi Flowers on
25 behalf of the Burnett plaintiffs.

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1 We do expect to have received confirmation of service
2 literally any moment and file it, and then we will seek our
3 defaults in an additional subcategory of our plaintiffs that
4 will be following the same framework that you put forward.

5 THE COURT: Is that confirmation of service?

6 MS. FLOWERS: Upon Iran. We were able to get back
7 from the State Department confirmation of service of process,
8 which was the first step that we had to file before we could
9 get our default.

10 THE COURT: So you don't have a default yet.

11 MS. FLOWERS: That's correct.

12 THE COURT: Okay. Do you have a sense of when you
13 will be making that application?

14 MS. FLOWERS: I think the application should probably
15 go in this week if not early next week.

16 THE COURT: Okay. Thank you.

17 MR. CARTER: Your Honor, Sean Carter on behalf of
18 federal insurance plaintiffs. So the commercial plaintiffs in
19 the federal insurance action also have judgments against Iran,
20 liability judgments. A subset of them filed affidavits and
21 received damages awards approved by Judge Maas and then entered
22 by Judge Daniels. Another subset of them had not yet filed
23 their damages affidavits, and we're going to be doing that
24 shortly following the same process that we did, it's a personal
25 affidavit of a corporate representative.

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1 THE COURT: Are they eligible for funds?

2 MR. CARTER: They are not. So we sort deferred and
3 held back.

4 THE COURT: So if we put you on the back burner you
5 won't be offended.

6 MR. CARTER: I will not be offended, and I held off to
7 stay on the back burner.

8 THE COURT: Thank you.

9 MR. FLEMING: I just wanted to be clear that for all
10 the functional equivalents for everyone in the Hoglan case we
11 did submit personal affidavits rather than lawyer affidavits.
12 I wanted to make clear you're not waiting for anything from us.

13 THE COURT: As I sit here right now, I'm not sure, but
14 if you haven't heard from us, then probably not. Thank you.

15 MR. KREINDLER: Your Honor, just one thought that
16 occurred to me here. While we're talking about the solatium
17 claims, it's clear that siblings have those claims. When we're
18 talking about more remote family members, uncle, aunts,
19 stepparents, half siblings, it might be helpful for the Court
20 for us to, along with briefing punitive damages, submit a brief
21 on how wide we believe the circle should go, because we're
22 dealing with 3,000 deaths and the circle could grow very, very
23 large. So rather than just dealing with it on the basis of the
24 relative handful of cases you have so far, it might make sense
25 to do some briefing on functional equivalent and who can

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1 participate.

2 And on punitive damages, our history is the same as
3 yours from dealing with Libya, we're used to a more uniform
4 result, but of course we have the precedent in this case and
5 others of the multipliers. So we would like to give some
6 thought to that and submit briefing on punitive damages, but
7 maybe a schedule to brief all the issues that this fund is
8 causing the Court to have to deal with quickly might make some
9 sense to do it on a comprehensive basis.

10 THE COURT: Sure. For those of you -- Mr. Kreindler
11 raised my prior involvement, so in case anyone is interested,
12 when I was a lawyer before I was a judge I represented a
13 certain number of families in litigation against Libya rising
14 out of the Pan Am bombing of Flight 103. I do not believe
15 there is a conflict. I thought about it when the case was
16 reassigned to me. I was not a member of the plaintiff's
17 committee, although I was colleagues with Mr. Kreindler and
18 Mr. Baumeister, so I raise that issue.

19 If anyone thinks there's a problem and wants to make
20 an application to me, I will certainly hear it, but I did
21 consider whether or not I thought there would an appearance of
22 impropriety. This was many years ago, probably six or eight
23 years ago, I don't quite remember, maybe longer, maybe ten
24 years ago or twelve years.

25 MR. BAUMEISTER: Please don't date us.

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1 THE COURT: In any event, the reference was to the
2 fact that I was a lawyer representing a small number of
3 families in the Pan Am litigation.

4 MR. BAUMEISTER: Judge, for the Baumeister firm, we
5 see absolutely not even an appearance of impropriety, so it's
6 not an issue as far as we're concerned.

7 MR. KREINDLER: Of course it's not an issue. You
8 share the same burden we have of a little knowledge and
9 experience can be a dangerous thing, so we're all in the same
10 boat.

11 THE COURT: So let me talk a little bit about the
12 potential objections to non-immediate family members. It seems
13 to me, again as a procedural matter, we issued an order
14 recommending damages for certain non-immediate family members,
15 stepfamily members and people who are not married but were
16 functional equivalents to spouses, and we denied the balance of
17 the non-immediate family members.

18 I think that the appropriate procedure would be to
19 lodge objections as to those claims. I appreciate the comment
20 that you never really had the opportunity to brief the issue,
21 and I think it would be fair and appropriate to give you that
22 opportunity, even arguably to do that before me in the first
23 instance if Judge Daniels would prefer that.

24 I don't know whether or not -- the need for briefing
25 and the urgency, whether or not we'll be able to hit a November

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1 deadline, I think it's unlikely that we will, but as you
2 mentioned, it may be that you want the potential to get these
3 judgments for something that may come in the future.

4 So I'm fine having briefing on these sort of
5 third-tier family members, but I do think an objection should
6 be lodged before Judge Daniels to preserve your rights. And so
7 I can notify Judge Daniels that you're going to submit an
8 objection, just maybe even a statement of objection, and I can
9 speak with him procedurally about what makes the most sense on
10 how to then actually set forth that objection.

11 I think what you wanted is the non-objectionable
12 judgments to go forward, and so it seems to me I think the most
13 simple way to go forward would be to submit a short letter to
14 Judge Daniels asking that he enter the partial judgments that
15 have been recommended by me, for you to lodge objections, and I
16 can ask Judge Daniels to sort of re-refer that issue back to me
17 and I can look at punitive damages and these non-immediate
18 family member claims at once at a reasonable briefing schedule.
19 But I think as a procedural matter you should lodge an
20 objection so you haven't waived your right to object to the
21 denials.

22 Let's talk about what a reasonable briefing schedule
23 would be for now both the punitive damages and the third tier
24 of family members. So we are at October 20. I imagine that
25 there is both a lot of legal research and some factual inquiry

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1 that you are all going to need to do, so I will take my leave
2 from you. I don't know if you want 30 days to brief it, 60
3 days to brief it. Do you have a sense of what is the schedule
4 that makes the most sense?

5 MR. KREINDLER: As between the two, I think 60 days
6 makes more sense. We have our hands full with some other
7 aspects of the case that we're going to be talking about. And
8 as I said, the important thing is the non-objectionable
9 judgments going into Mr. Feinberg in the next two weeks, but a
10 briefing on the two other topics in 60 days I think makes
11 sense.

12 MR. PANTAZIS: I was going to agree, your Honor. We
13 have 88 people that fell in that category. Not all of them may
14 be appealed or objected to, but there is a lot of individual
15 facts to those folks that might require the 60 days, so we
16 would appreciate a 60-day period.

17 THE COURT: 60 days puts us right before the Christmas
18 holiday. I don't know if that's better or worse for you all.
19 60 days would get us to December 20, so we could do that,
20 that's a Tuesday, or we could make it December 23rd, which is a
21 Friday, or if you would rather, we could look to the first or
22 second week in January. I leave it to you all.

23 MR. KREINDLER: I think January is easier.

24 MR. PANTAZIS: That's fine.

25 THE COURT: Let's say, unless anyone is superstitious,

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1 Friday the 13th.

2 So let's set January 13th as the deadline to file
3 these submissions, so we'll be talking about punitive damages
4 and about the non-immediate family members.

5 I'm going to give the defaulting defendants an
6 opportunity to respond, so I will -- we'll start looking at
7 this issue, but I will not issue a decision probably for 30
8 days to allow the potential for the defaulting defendants to
9 come forward. So you should assume that I'm going to wait
10 probably until the middle of February. If the defaulting
11 defendants want to file anything, they can file something. I
12 will set it for February 17, and then hearing nothing, I will
13 assume that the motion is fully submitted.

14 Okay. Let's talk about Saudi Arabia and the new
15 legislation.

16 MR. CARTER: Sure, your Honor, Sean Carter again on
17 behalf of the PEC.

18 As I think we indicated in the letter to Judge
19 Daniels, the plaintiffs were intending to file a motion with
20 the Second Circuit in the context of the pending appeal of the
21 dismissals of the kingdom and Saudi High Commission seeking to
22 have the decision below vacated, the cause remanded to the
23 district court for further proceedings in accordance with the
24 new law, and to authorize some repleading.

25 Per the Second Circuit rules, we reached out to

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1 counsel for Saudi Arabia and for the Saudi High Commission to
2 see whether they would consent. That led to a dialogue about
3 presenting a joint motion to the Second Circuit. And after
4 some back and forth on the actual text of the motion itself, we
5 reached agreement yesterday on a joint motion that will be
6 submitted to the Second Circuit, my expectation is either later
7 today or tomorrow.

8 So we will jointly be asking for the decision to be
9 vacated, for the case to be remanded for the district court for
10 further proceedings in accordance with the Justice Against
11 Sponsors of Terrorism Act, and then there's likely to be a
12 disagreement about the scope of repleading that should be
13 authorized once the case is back before the district court.

14 I think we are in agreement that there should be
15 repleading at a minimum to allow for the assertion of the new
16 cause of action that is created under the statute and to invoke
17 the jurisdictional authorization that's embodied in the law.

18 We also think that there is some additional factual
19 pleading that needs to occur to align the record and the
20 allegations with the requirements of the new law. And so we
21 have not had a chance to speak about a particular schedule for
22 that or what exactly it might look like with counsel for the
23 kingdom. He's been traveling. My expectation is that as soon
24 as he's back we'll begin discussing those issues.

25 What we did in the proceedings in 2014/2015 was that

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1 we proceeded to file simultaneously our motion to amend at the
2 same time the kingdom and the Saudi High Commission filed their
3 renewed motion to dismiss, and we may very well proceed under
4 that same sort of framework.

5 THE COURT: Okay. I note that Judge Daniels has
6 scheduled a conference for January 18, so presumably by then,
7 which is three months from now, the case will have been
8 remanded back to this Court. I'm wondering if it make sense to
9 hold off on any motion practice until that conference, which
10 will, one, give you some additional time to continue speaking
11 with your adversary about whether or not any agreements can be
12 reached with respect to the amendment -- I don't know if you
13 have provided your adversary with the draft amendment.

14 MR. CARTER: We have not, your Honor.

15 THE COURT: So that will give you the time to do that.

16 I think what I would recommend is to have you draft
17 your proposed amended pleading and provide it to counsel, allow
18 some conversation about that, and then when we meet jointly on
19 January 18 we can discuss whether or not your adversary, having
20 seen and reviewed the pleading, is willing to consent to its
21 amendment and set schedules either for a motion to amend, or if
22 it's not necessary, the anticipated motion to dismiss.

23 MR. CARTER: I'm happy to communicate that back to
24 counsel for the two defendants at issue, and if there's any
25 concern on our part we can advise your Honor and Judge Daniels

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1 in writing.

2 THE COURT: The goal should be that we're not filing
3 motions before we meet again on that particular issue.

4 MR. CARTER: Thank you, your Honor. The other
5 question your Honor raised was whether or not we expected
6 additional cases to be filed against the kingdom, and I think
7 your Honor referenced cases not involving the September 11
8 attacks. We don't expect other cases unrelated to the
9 September 11 attacks. With that said, there are a universe of
10 victims and family members of the September 11 attack, victims
11 who have not previously filed suit against the kingdom, and
12 there's obviously a potential that some of those folks will
13 come forward at this point and file claims.

14 To the extent we are aware of firms that have broad
15 representation in the 9/11 family community, we have gone out
16 to them and tried to bring them under the umbrella of the
17 Plaintiffs Executive Committee to try and promote an orderly
18 process with respect to any further claims that might be filed
19 so that pleadings look relatively the same and so that we can
20 try and coordinate any further proceedings as to the kingdom as
21 much as is possible.

22 I think that we have done a good job in identifying
23 most of the camps that fall into that universe, but we can't be
24 sure that we have reached out to everyone.

25 THE COURT: Okay. I understand that one case was

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1 recently filed. I don't know if the lawyer representing those
2 plaintiffs is here today.

3 There was just recently a case filed and an
4 application to be deemed related. One question that we, the
5 Court, has is whether or not the appropriate protocol is to
6 first go to the MDL panel before coming here or filing and then
7 filing with the MDL panel. It seems to me that it probably
8 makes the most sense to have cases be blessed through the MDL
9 panel before they are formally placed into this MDL here. Is
10 that the recommendation that you're giving to lawyers that
11 you're reaching out to?

12 MR. CARTER: I think we would. I think we would tell
13 them if they file elsewhere and they want to come into the MDL,
14 the best approach is to notify the judicial panel of the
15 multi-district litigation of the related case and then expect a
16 conditional transfer order would be issued. And if there's no
17 objection, then they would become part of the MDL relatively
18 quickly.

19 THE COURT: And that would also be true, I think, for
20 people who are filing in the first instance in the Southern
21 District of New York.

22 MR. CARTER: That's correct, your Honor.

23 THE COURT: We want to let the MDL panel know that we
24 anticipate that there may be an additional body of cases that
25 are coming in now as a result of this litigation so they can be

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1 looking to that and turning it around quickly. So it seems to
2 me the message I can send back to them is yes, we anticipate
3 having some number of additional cases brought against the
4 kingdom, they will be related to the 9/11 attacks and not
5 separate claims, and that the parties will make an application
6 to the MDL panel when they file. Is that accurate?

7 MR. CARTER: That's what we'll recommend.

8 THE COURT: That's what you're recommending.

9 Okay. We think it makes the most sense for things to
10 run through the MDL panel so that we all have a firm sense of
11 what is in and what is not in this case

12 MR. CARTER: Thank you, your Honor.

13 THE COURT: Good. All right. Next thing on my list
14 is the Dallah Avco motion to compel.

15 Are the parties who brought that here?

16 MR. CARTER: Your Honor, it was filed on behalf of the
17 plaintiffs generally. It is fully briefed, as your Honor is
18 aware, and counsel for Dallah Avco and plaintiffs are prepared
19 today to discuss with your Honor a date for argument, if that
20 makes sense.

21 THE COURT: I don't know that I'm ready to discuss a
22 date for argument, but I think I would benefit from a
23 two-minute primer on what the motion is about.

24 MR. CARTER: Sure, your Honor. Very broadly speaking,
25 the plaintiffs have alleged that Dallah Avco provided

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1 essentially a cover job to an individual named Omar Al-Bayoumi.
2 Omar Al-Bayoumi was a Saudi residing in the United States in
3 the San Diego area who, according to the 9/11 Commission and
4 various other reports, provided direct assistance to two of the
5 9/11 hijackers, Khalid Al-Mihdhar and Nawaf Al-Hazmi, after
6 they arrived in the United States.

7 It's relatively undisputed that Bayoumi did provide
8 some assistance to them. There are various disputes
9 surrounding whether or not he did so knowingly, the full nature
10 of that dispute, there's also a question surrounding Bayoumi as
11 to the true nature of his relationship to the Saudi government.
12 Bayoumi was on government payroll for many years, allegedly on
13 secondment to Dallah Avco, while he was here in the United
14 States purportedly to pursue educational activities. The
15 plaintiffs have alleged that in fact Bayoumi was a part of a
16 network of undisclosed Saudi government agents here in the
17 United States who were reporting to the kingdom's Ministry of
18 Islamic Affairs, and that he provided support to the
19 hijackers at the direction of a cleric resident in the Los
20 Angeles Consulate of -- the Saudi Los Angeles consulate.

21 And so with regard to Dallah Avco, the claims
22 essentially proceeded up to appeal before the Second Circuit as
23 to whether or not Dallah Avco had directed his tortious
24 activity at the United States by, as we said, providing a cover
25 job to Bayoumi that allowed him to carry out his undisclosed

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1 activities here in the United States.

2 The Second Circuit Court of Appeals overturned the
3 dismissal of Dallah Avco and remanded the case for
4 jurisdictional discovery. We have had some disputes regarding
5 the appropriate scope of that discovery, and I will allow
6 counsel for Dallah Avco to address their position. Our view is
7 obviously that it encompasses documents related to Dallah
8 Avco's relationship with Omar Bayoumi as well as communications
9 with the Saudi government concerning Mr. Bayoumi.

10 There were also indications in some of the FBI reports
11 that have been declassified that witnesses felt there were
12 additional undisclosed employees on the Dallah Avco payroll who
13 never showed up for work, and so we served discovery
14 surrounding those issues. One of the problems that we
15 encountered in the context of that is that Dallah Avco, during
16 the course of litigation, took the records relating to the
17 project on which Bayoumi was seconded, put them in a giant
18 warehouse, for lack of a better term, in a relatively
19 disorganized manner, and they became increasingly disorganized
20 over time.

21 So there is a dispute in the motion as to whether or
22 not the efforts Dallah Avco has undertaken today are adequate
23 to have returned all the potentially relevant records. We
24 identified some specific records that we think are especially
25 important to the theories that have been advanced that we

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1 believe are missing from what we received, and Dallah Avco's
2 position, again, I will let them speak to that.

3 THE COURT: Okay, thank you. That helps.

4 MR. KRY: For some additional context, first in terms
5 of the facts, Dallah Avco's role with respect to the Saudi
6 government was that there was a project for an air navigation
7 assistance support project for which Dallah Avco essentially
8 acted as a contractor providing manpower, procurements, and
9 payroll processing services.

10 Mr. Al Bayoumi was one of I think about 1,500
11 employees that were attached to that Saudi project, and so, as
12 with other employees, Dallah Avco essentially handled payroll.
13 Its relationship with Mr. Al Bayoumi, its knowledge about his
14 activities, was extremely minimal. All the evidence that has
15 been produced in the case so far has shown that Dallah Avco did
16 not supervise his work, doesn't direct his work, and so many of
17 the complaints that are raised with this motion to compel I
18 think rest on the misimpression that they are expecting us to
19 have more -- they're expecting Dallah Avco to have more than it
20 would logically have given the very limited relationship
21 between Dallah Avco and Mr. Al Bayoumi.

22 On the specific points that are raised in the motion,
23 I think it really falls into two categories. About half of the
24 60 or so requests they served sought documents relating to
25 Mr. Al Bayoumi, various types of documents, and we never

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1 disputed those are fair game. So on those issue, what the
2 motion really comes down to is: Has Dallah Avco's search been
3 comprehensive and thorough enough?

4 As set out in our opposition papers, we believe that
5 it absolutely has. We face special challenges, and that was
6 alluded to. Many of the documents were in off-site storage,
7 not for any nefarious reason, but that's where they were
8 stored. So it was a major undertaking that took a ton of
9 resources and a lot of expense from our client to retrieve
10 those to find everything. Our client went through the
11 warehouse not once but twice to dig that all that stuff up and
12 bring it back.

13 And I think our opposition papers make a persuasive
14 showing that whatever there is that relates to Mr. Al Bayoumi
15 we searched for several times and produced whatever we have
16 been able to come up with. And the documents on that are not
17 just our opposition, but in connection with the opposition we
18 filed a lengthy and very detailed affidavit from the general
19 counsel of the Dallah Group who is in charge of Dallah Avco's
20 legal defense. So there's a very detailed factual record in
21 terms of what was done with the search and why we believe it's
22 comprehensive enough to find the documents relating to
23 Mr. Al-Bayoumi that the plaintiffs are seeking.

24 The second half of the motion to compel relates to
25 broader topics that do not relate to Mr. Omar Bayoumi, and in a

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1 number of respects we have -- through the meet and confer
2 process we tried to accommodate those concerns. For example,
3 some of the things they mentioned, they raised the issue of:
4 Are there other employees who are similarly situated to
5 Mr. Al-Bayoumi?

6 While one thing we did in response to that is we not
7 only looked for and produced all the documents relating to
8 Mr. Al-Bayoumi's comments about that ANSS project, but we also
9 went through all the 1,500 other employees files and looked for
10 any evidence of anyone else that had similarly been seconded to
11 the project from the Kingdom of Saudi Arabia. And we found a
12 small number of instances, but the relevant files on those were
13 produced as well. And so we have gone beyond just the stuff
14 directly relating to Mr. Al-Bayoumi, but essentially that piece
15 of the motion relates to whether -- other topics not relating
16 to Mr. Al-Bayoumi which nevertheless we have to search for
17 documents, and those are also fully briefed in the motion.

18 I want to clarify one factual point for the record.
19 There was a reference Mr. Al-Bayoumi being seconded to Dallah
20 Avco, and I think we have been clear from the outset of the
21 case that Mr. Al-Bayoumi was seconded to the ANSS project. His
22 work was not directly supervised by Dallah Avco. And is that
23 an important point to keep in mind not only for the merits of
24 the case but also in the context of this motion to compel,
25 because it explains why a lot of documents one might expect to

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1 see if we were actually supervising and actually had knowledge
2 of what he was doing aren't there. Because what a company like
3 Dallah Avco might be expecting to have about somebody whose
4 payroll they're handling is going to be very different if
5 they're just performing very limited administrative services as
6 a contractor for the entity that actually directs and
7 supervises its work.

8 THE COURT: Good, that was helpful. Thank you.

9 The other motion that I'm aware of is a motion for
10 sanctions, Perouz Sedaghaty motion for sanctions.

11 MR. HAEFELE: Good morning again, your Honor, Robert
12 Haeefele from Motley Rice.

13 The Sedaghaty issue, I think that the issue is that
14 the briefing was done on that, your Honor, and we finished the
15 briefing on the Sedaghaty motion several months ago. I think
16 we were just waiting for an order from the Court.

17 I spoke to Mr. Kabat today who represents
18 Mr. Sedaghaty, who is here somewhere. I think both of our
19 positions are it was something that we anticipated -- unless
20 your Honor, who now took the case over from Judge Maas, wanted
21 some oral argument -- we understood that it was to be done
22 based on briefing because the briefing was really something
23 that the Court had asked for. At the original argument Judge
24 Maas indicated that he was leaning in one direction, but then
25 entertained the notion of having some briefing from Mr. Kabat

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1 on a limited issue of whether or not the Court would impose as
2 a sanction adverse inference at trial.

3 THE COURT: Okay.

4 MR. HAEFELE: And that was the issue that he asked for
5 briefing on, which has been briefed, and he asked us, the
6 plaintiffs, to hold off on responding until the Court indicated
7 whether or not it wanted briefing. Eventually it did, and that
8 briefing was done.

9 And so, from our perspective, we anticipated that it
10 would be -- we expected an order issued from Judge Maas before
11 he left, but apparently it's something that has been passed on
12 to your Honor.

13 THE COURT: I will betray my lack of engagement on
14 this particular motion. Does the motion indicate clearly where
15 the hearing was so that I can read the transcript that Judge
16 Maas --

17 MR. HAEFELE: Yes, I can tell you the date, July 8,
18 2016.

19 THE COURT: July 8, 2016. So I will focus on that
20 transcript and read the submissions. And sounds like we won't
21 need oral argument. If we do, I will let you know and we will
22 turn to it. Consistent with my low hanging fruit and urgency
23 approach to triaging the case right now, I had put the two
24 pending motions a bit on the back burner, and I will turn to
25 them in the ordinary course.

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1 MR. HAEFELE: Thank you.

2 MR. KRY: Will argument be scheduled on the motion to
3 compel?

4 THE COURT: I will admit I have not read the motion
5 papers yet, so I don't know whether or not oral argument will
6 be helpful to me or not. I will let you know as soon as I do.

7 I was thinking as we were talking, given your sort of
8 suggestion that oral argument might be useful, that maybe what
9 I would do would be to schedule it on the 18th of January since
10 you're already going to be in court and it be the most
11 efficient way to handle it. Certainly by then I will have
12 gotten up to speed. So I'm thinking that that might make the
13 most sense.

14 MR. KRY: Thank you, your Honor.

15 MR. CARTER: I think that would be fine, and I'm
16 trying to think back to the specifics of the briefing, but I
17 would guess that it sort of drops out of thin air without a
18 whole lot of context because there had been a lot of prior
19 briefing that preceded it, so it may very well prove that oral
20 argument would be helpful.

21 THE COURT: And as far as timing goes, if we delay
22 getting a ruling out until sometime after the January 18
23 conference, that works for everybody?

24 MR. CARTER: It does, your Honor.

25 MR. KRY: Yes.

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1 THE COURT: Why don't we assume now that we will have
2 oral argument on the motion on the 18th of January unless I
3 find that of all my other cases disappear and I have nothing
4 else to do but focus on this motion in the next month or two.

5 MR. KABAT: Your Honor, I'm also the attorney for
6 Perouz Sedaghaty, and we're willing to rest on the submission
7 of docket number 3317, which is our letter to Judge Mass from
8 July 15. But if you wish to have oral argument, we're willing
9 to participate on January 18 or some later date with respect to
10 the motion that you mentioned.

11 THE COURT: Okay. Thank you very much.

12 On my schedule, the next question is: Are there any
13 other pending motions? Anything else that I should know about?

14 MR. CARTER: Your Honor, Sean Carter again. It's not
15 so much a pending motion as there are a few loose ends relating
16 to issues that Judge Maas addressed previously.

17 Judge Maas had issued a monetary penalty against Wa'el
18 Jalaïdan, one of the defendants involved in discovery. Judge
19 Daniels thereafter formalized that monetary penalty and
20 required defendant Jalaïdan, who has an executive order 13224
21 especially designated global terrorist, to undertake steps to
22 obtain a license from the Office of Foreign Assets Control, as
23 would be required in order to make payment of the penalty to
24 us.

25 Several months ago there was an indication that an

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1 application to the Office of Foreign Assets Control had been
2 submitted. It's been quite a while and we haven't heard
3 anything further regarding the issue, so from the plaintiffs'
4 perspective I think we're wondering whether or not the license
5 has been issued; if it has not, whether or not we can perhaps
6 see some of the communications with the Office of Foreign
7 Assets Control so we can better understand what the delay might
8 be, and to the extent the license has been issued, whether or
9 not the defendant intends to make the payment mandated by the
10 Court.

11 THE COURT: Is the Court the entity that was supposed
12 to make this application?

13 MR. CARTER: No, the defendant himself made the
14 application and affirmed to the Court, and as required by Judge
15 Daniels, that an application had been submitted.

16 THE COURT: I'm sorry, I'm not clear on what you're
17 asking of me, or maybe you're just giving me an update.

18 MR. CARTER: Your Honor, I think what we're asking is
19 that counsel for defendant Jalaidan apprise both the Court and
20 the plaintiffs as to the status of the application to obtain
21 the license necessary to make this payment, and if the license
22 has been issued, to explain why the payment has not issued.

23 THE COURT: Okay. Is counsel for Wa'el Jalaidan in
24 the room?

25 No.

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1 MR. CARTER: I don't think so, your Honor.

2 THE COURT: I will take that request under advisement.

3 Okay. Before we end let me pull the lens back a
4 little bit now and talk to you all about going forward with
5 this case. And maybe, Mr. Carter, you're the one to talk to me
6 about this. Is there a vision of how this case moves forward
7 in this sort of traditional litigation posture, which is to say
8 is there a schedule for discovery, should there be a schedule
9 for discovery, are there depositions that can be taken and
10 should be taken? Where are things?

11 MR. CARTER: Your Honor, what we did I think a little
12 over a year ago, with Judge Maas' approval, is to suggest a
13 sort of rolling schedule for filing motions to compel as to the
14 defendants. And the deadline for filing the motions to compel
15 was determined in large degree by when the defendants
16 themselves indicated that they would be done making their
17 rolling productions of documents.

18 The two problems that we had encountered were, one, in
19 an environment where the defendants were still producing
20 documents, it was very difficult for us to determine what might
21 be missing, and therefore very difficult for us to file the
22 necessary motions to compel.

23 And in the same vain, in a world where there was a
24 potential that a massive influx of additional documents were
25 going to be submitted, it was difficult for us to move forward

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1 with depositions, particularly overseas depositions that we
2 might have to then retake by virtue of the most important
3 documents coming at the tail end.

4 So the vision I think for the case was to try and get
5 through this document production phase, resolve any residual
6 issues relating to motions to compel after the defendants said
7 they were finished, and then go out and take the depositions
8 that we need to take.

9 Over the last several months a number of defendants
10 have indicated they need some more time to complete their
11 rolling productions. They have discovered additional
12 documents. And so a few of the defendants have come to us and
13 said we're still going to be producing documents essentially
14 through the end of this year.

15 In another instance or two, for instance defendants
16 Muslim World League and IIRO, they came to us indicating they
17 believed they had completed their productions. We had a number
18 of meet and confers, and they agreed after that dialogue to go
19 back and look for some additional documents. And about two
20 weeks ago we sat down again in Washington to discuss the issue,
21 and they have indicated to us that they are going to be
22 producing further documents.

23 So I think broadly we hope that the document
24 production phase will be done in the very early part of next
25 year, at the latest, and that we will be able to wrap up any

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1 motions to compel associated with that not very long
2 thereafter.

3 One of the challenges is if a defendant produces a
4 hundred thousand additional documents very near to the end of
5 the rolling production and they're in seven different
6 languages, which has been the case, it takes a little while for
7 us to get through that. And so I think we would like just to
8 get a very clear assessment from the defendants of when they
9 realistically would be done producing their documents, and then
10 we can set a schedule for wrapping up all the motions to
11 compel.

12 On the plaintiffs' side, we finished our production in
13 August of 2012. Our investigations have continued since that
14 time, so there is some additional documentation we'll be
15 producing principally by virtue of FOIA requests that we sent
16 out seven years ago and that we're now receiving responses to.
17 But our productions have been done for a very long time and
18 we're really waiting for the defendants all to wrap up theirs.

19 THE COURT: Okay. Any defense counsel want to speak
20 to that issue?

21 MR. COTTREAU: I will start, your Honor. Steve
22 Cottreau for Dubai Islamic Bank.

23 We, too, completed our production in August 2012.
24 After three years, plaintiffs moved to compel, and in March the
25 Court ordered some clean-up categories. By and large we have

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1 complied with those clean-up categories and are still working
2 through a few issues with plaintiffs.

3 The only other issue I would raise on that -- and we
4 fully expect that we'll work those issues out hopefully with
5 plaintiffs and complete our production and response to the
6 motion to compel early next year. The only issue I would raise
7 with you is that some of the witnesses in the case on the
8 witness list are getting quite aged. And making no judgment
9 being able to predict their health in the future, we would like
10 to move forward with at least a couple of those depositions. I
11 raised the issue today with Mr. Carter and he seemed amenable
12 to it, but want to make sure that's fine with the Court to go
13 ahead and move forward with people who may be getting up in
14 years.

15 THE COURT: I think that make sense.

16 MR. CARTER: Yes, your Honor.

17 THE COURT: Here's what I would like to propose: I
18 would like to set a deadline for paper discovery at the end of
19 the year so that we have some concrete backstop --

20 MR. GOETZ: Your Honor, before you do that, may I
21 weigh in for WAMY?

22 THE COURT: Yes, sir.

23 MR. GOETZ: WAMY is one of the defendants that
24 Mr. Carter alluded to that has made some production and is now
25 submitting that on a rolling basis. We produced over 586,000

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1 documents or pages so far. Realistically, there are a number
2 of other documents that we have now received from our client.
3 We think that the receipt process is completed, but we're still
4 reviewing those, determining if there's duplications, et
5 cetera. There are a number of documents go to through.

6 Our target date was the end of the year, but we
7 anticipate asking plaintiffs for one further extension of some
8 months. So I want to let the Court know that before you set
9 the end of the year as a firm date. We think realistically,
10 from our perspective, given the amount of documents to review,
11 the different languages that they're in, most are in Arabic,
12 that we will not meet that end of the year deadline.

13 THE COURT: You said you were hoping to get it by the
14 end of year and then you think you will need several more
15 months. What's both reasonable and realistic -- those two
16 things may not always work together -- time frame?

17 MR. GOETZ: Your Honor, I anticipate asking for
18 another extension of a few months, I don't want to say three or
19 four, but we would hope it would be somewhere in that ballpark.
20 I want to be candid with the Court about the number of
21 documents that we still have to review. It's a large number,
22 and I agree with Mr. Carter that before we get to the motion to
23 compel stage or the deposition stage that that discovery --
24 paper discovery should be complete.

25 THE COURT: Okay.

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1 Yes, sir.

2 MR. NASSAR: Your Honor, Waleed Nassar on behalf of
3 the International Islamic Relief Organization and the Muslim
4 World League.

5 We're expecting an influx of documents from several
6 overseas locations. There's been delays in obtaining the
7 documents. Some of the documents are coming from Tanzania,
8 Kenya, some far-flung places. So we're still waiting for
9 receipt of the documents, but we do anticipate producing the
10 remainder of documents that plaintiffs have requested of us by
11 the end of January. But I think given the recent holidays and
12 overseas and whatnot, we don't anticipate receiving the
13 documents in the upcoming weeks, so there will be a slight
14 delay on that.

15 THE COURT: Okay.

16 Mr. Carter, I have just heard from the WAMY defendants
17 and the Muslim World League defendants. Are there other
18 defendants for whom you are receiving documents and you believe
19 you either received most or will have received most by the end
20 of the year?

21 MR. CARTER: Your Honor, as Mr. Cottreau said, we're
22 working through some issues with him relating to his client,
23 Dubai Islamic Bank. I do think that the additional productions
24 we are expecting from Muslim World League, International
25 Islamic Relief, and World Assembly of Muslim Youth represent

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1 likely the bulk -- along with Mr. Salerno's client, Mr. Kadi,
2 those are the camps where we expect to receive the bulk of the
3 documents. And I think everyone was sort of targeting towards
4 the end of the year. We're now receiving notice that we're
5 probably going to bleed over a few months after that, but we
6 would expect to see everything within that first quarter of
7 next year from the defendants.

8 The one difficulty we have is then moving forward
9 after that point in terms of what we do with regard to timing
10 of motions to compel. It's very difficult for us to predict
11 right now because we have no idea what the nature of documents
12 might be, the scale of the productions that are being made, the
13 languages that are implicated. So we would like to get more of
14 the documents in-house before we address specifically a
15 schedule for completing all the motions to compel.

16 THE COURT: Here's what I'm going to do, I'm going to
17 set a deadline for document production of March 31st. Then
18 what I'm going to do is request that a letter is submitted to
19 me on April 21st advising me of whether or not the parties
20 anticipate any motion to compel and setting forth a reasonable
21 briefing schedule on those motions.

22 So that will give you time, hopefully, to go through
23 those documents, continue the meet and confer process, which
24 sounds like it's been largely successful to date, and maybe
25 there will be no need for motions to compel. But that should

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1 give you a few weeks, once you have everything, to engage in a
2 meet and confer. So let's at least now set those as deadlines.
3 So March 31st for document production and April 21st for a
4 status letter to me on any motions to compel.

5 MR. CARTER: Your Honor, one thing with regard to
6 those deadlines. Would it be helpful -- to the extent that we
7 identify issues where we're not in agreement with the
8 defendants and determine well before that March 31st deadline
9 that there's an area where there's going to be a dispute that
10 will have to be resolved by the Court, would it be helpful for
11 us to simply proceed and file those motions to compel on a
12 rolling basis between?

13 THE COURT: I think we should talk in January, because
14 I think that's probably a reasonable time to know whether that
15 in fact has come to pass. So let's plan when we meet in
16 January to check in where document discovery is, and to the
17 extent that you identify whole areas that the defendants are
18 refusing to either produce or search, we can tee up then
19 whether or not it makes sense to front load some motions. So
20 why don't we wait until then to evaluate that.

21 MR. CARTER: Sounds good, your Honor. Thank you.

22 THE COURT: Anything else that we want to talk about?

23 I think when we meet in January we'll discuss sort of
24 the status of discovery, but we're also going to talk a lot
25 about Saudi Arabia and what is going on with those cases. So

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1 you should come to that conference prepared to discuss whether
2 or not a motion to amend is going to be required, and if so or
3 if not, what the motion to dismiss that we're anticipating,
4 when that should be filed and whether to do cross motions or
5 not.

6 Anything further?

7 I have a couple of housekeeping questions. The first
8 one is there are a lot of you here. I try to run my cases in
9 the most practical and efficient way possible. Sometimes that
10 is sending emails to a couple of lawyers to get an answer. I
11 think there are lawyers -- I just want you to let us know, and
12 particularly let Andrew, my clerk, know: Who are the people
13 that we should be contacting both from the plaintiffs' and the
14 defendants' side if we need to -- either we have a question
15 about what is going on or where things stand, where should we
16 be going?

17 MR. KABAT: Your Honor, Sean Carter and I have been
18 handling that, and we coordinate with our respective colleagues
19 on that point.

20 THE COURT: Perfect. Remind me of your name again?

21 MR. KABAT: Alan Kabat.

22 THE COURT: Great.

23 MR. CARTER: And your Honor, as Mr. Kabat said, I
24 generally have coordinated this, but it would be helpful to
25 also copy Mr. Haefele just in case I'm away.

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1 THE COURT: Okay. So I will assume that, unless
2 somebody tells me later that someone else should be on that
3 list, as long as I email Messrs. Carter, Haefele and Kabat,
4 then I have communicated to the two adversarial parties, so to
5 speak. I don't plan on sort of issuing orders that way, but to
6 the extent I just need some help locating documents or just
7 need some guidance, I'm going to go ahead and look there.

8 The other housekeeping question is just to confirm
9 that I'm going to be issuing orders under the MDL docket number
10 and not under the individualized case. If it goes under the
11 MDL order, we should assume it applies to everything.

12 Obviously, the discovery schedule that I just imposed
13 with respect to document discovery will be revisited if and
14 when Saudi Arabia is back in this case, but otherwise we should
15 assume that I'll issue orders just under the MDL number, as was
16 Judge Maas' practice, which I have adopted. To the extent an
17 order addresses only a particular case within the MDL, we'll
18 indicate at the front line which case is affected by the order,
19 but I assume that's the best way to proceed so we can keep
20 everything in the MDL docket. Everybody agree to that?

21 Okay. Good. Well, I'm pleased to be presiding over
22 this case, and I want again to extend to you all, if you think
23 there's a better way, more efficient way for me to be handling
24 this complex case, I'm open to hearing about it, but I do plan
25 on trying to keep us moving in the right direction and keep us

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1 on as short a leash as is reasonably possible in a case that is
2 this complex. Obviously there is enormous both public interest
3 in the case, and for the families I know there's a desire to
4 have closure as soon as is reasonably possible, and that's
5 going to be my goal.

6 It's nice to see you all, and I will see you on
7 January 18.

8 o0o